

Chapter 20

CONFLICTS DURING CONSTRUCTION

GENERAL

The goal of utility coordination is to not have any utility-related problems during construction. Unfortunately, as hard as we try, it is not always possible to accomplish that goal. There are several types of problems that may occur during construction. In the sections that follow are suggested ways to handle each type of problem.

The WisDOT Construction and Materials Manual Chapter 2 Section 5 Subject 2 “Utilities” page 3 states, *“Where adjustments of utility facilities are accomplished during stages of construction operations and problems are created between the contractor’s operations and the utility operations, the engineer will be the coordinator for any details not covered by the approved work plan. The project manager will keep a record of the progress of the utility adjustments and will report all problems to the District Office in the weekly report. Problems affecting contract work progress should be reported at once to the district supervisor.”*

The first reaction to a problem should be to contact the utility person listed on the plan, or the person that represented the utility at the preconstruction meeting. If you are unable to make contact with that person, ask the receptionist or whoever answers the phone if there is anyone else that can help you.

If you make contact, but are unable to resolve the problem, you may want to contact the Region Utility Coordinator. They often know whom to contact within the utility company to get results. Also, sometimes having a more neutral third party involved helps bring a resolution to the problem.

There are times when the situation becomes complicated or unusual. You may then want to involve the Central Office Utility & Access Unit in the Bureau of Technical Services (608-266-3589).

Always remember that utilities have a right to occupy the highway right-of-way by permit. They serve the general public by providing services that are essential for our way of life. The utility industry, like WisDOT, is under continuing pressure to reduce costs and staff, while trying to maintain good service to their customers. We need to work together with them so that the disruption to taxpayers and utility ratepayers is minimized.

DOCUMENTATION

When you encounter a problem with a utility company during construction and the problem is not easily resolved, document the problem so that measures can be taken to avoid similar problems in the future. [Figure 20-1](#) can be used to document the problem. A copy of this report is also found in the construction field pantry software on each field office computer. Send a copy of the documentation to the Region Utility Coordinator and to the Bureau of Technical Services Utility Engineer, Room 651 Hill Farms State Office Building. The Utility Engineer tracks these forms in an attempt to identify common problems and trouble areas.

The utility company may want to document their side of the story. [Figure 20-2](#) is a report that can be filled out by the utility company to record the situation as they see it.

LOCAL AND CONNECTING HIGHWAY PROJECTS

On local roads and connecting highways WisDOT is not the permitting authority. You can ask the local government to help put pressure on the utility through their utility accommodation policy and utility permitting process. Chances are the problem you are having is also a violation of their policy. Having the local permitting agency involved may help persuade the utility company to be more cooperative.

On connecting highways, every municipality should have a permitting process, but on local road projects you may find that the local unit of government does not have a utility accommodation policy and no permitting process. In these cases the local government probably won't be of much assistance in solving the problem, but it still doesn't hurt to try to enlist their support.

CONTRACTOR'S RESPONSIBILITY

Section 107.22 of the State of Wisconsin Department of Transportation Standard Specifications For Highway and Structure Construction (2005 Edition) states:

107.22 Contractor's Responsibility for Utility Facilities, Property, and Services

- (1) The department expressly reserves for the proper authorities of the municipality in which the work is done the right to construct utility services in the highway or street, or to grant permits for the same, at any time. Coordinate and cooperate with utilities in the removal and rearrangement of existing facilities to minimize their service interruption and duplication of work by the utilities. At least 3 business days before breaking ground, the contractor shall notify the proper utility authorities that the contractor's operations may affect their facilities including: streets, gas and water pipes, electric and other conduits, railroads, poles, manholes, catch basins, sewers, and other property. Never hinder or interfere with utility representatives in the protection or operation of their facilities. Obtain all necessary information regarding existing facilities. Protect existing facilities from damage and unnecessary exposure.
- (2) Obtain all necessary information regarding the planned installation of new facilities identified in the contract. Make proper provision and give proper notification so the utilities can install new facilities at the proper time without delay or unnecessary inconvenience. Do not pave over the location of a new underground facility, planned for installation concurrently with this contract, before installing the facility.
- (3) If the contractor damages or interrupts service, the contractor shall notify the utility promptly. Coordinate and cooperate with the utility in the repair of the facility. The department will determine who is responsible for repair costs as specified in Wisconsin statutes 66.0831 and 182.0175(2).
- (4) If the contractor finds facilities not identified in the contract, the engineer will determine whether adjustment or relocation of the facility is necessary to accommodate contract work. The engineer will arrange with the utility or the contractor to adjust or relocate the facility. If deemed necessary, the engineer will revise the contract as specified in [104.2](#).
- (5) If specified in the contract, the contractor and the department will comply with administrative rule, Trans 220 of the Wisconsin administrative code.

Please note that the contractor must coordinate and cooperate with utility owners, and it is the contractor's responsibility to obtain all necessary information in regard to existing and planned utilities.

FIELD CHANGES

It is sometimes necessary to make changes to the plan during construction. Obviously, the utility had no way of knowing that these changes were going to take place, and therefore could not relocate prior to construction. The utility must be notified of such changes, and must be given adequate time to design and construct a relocation of their facility. The definition of adequate time is open to interpretation, and varies with the scope of work involved. Trans. 220.05(13) states:

"If, after the letting date of the highway improvement project, additional utility relocation or adjustment work is found necessary, the department shall notify the owner (*utility*). The department and the owner (*utility*) shall agree on a revised work plan."

This wording is applicable to all projects, WisDOT and the utility must agree on a reasonable timeframe to do the relocation work. It is important to note that the field change is the cause of any delays, not the utility company.

UNKNOWN FACILITIES

This problem has a few potential causes. The facility may not have been field located at the time the survey crews picked up the topography. The survey crew may have missed it, and not picked up the

information. The information may have been picked up but never made it to the plans. The utility may not even be aware that the facility is there. (This happens most often in older portions of cities where records may not exist for older facilities, especially for clay pipe sewer systems.)

Whatever the reason, there is a utility facility that is in the way of construction. Again, the first thing to do is to contact the person from the utility company listed on the plan, or the person that attended the preconstruction meeting. If they aren't available, ask if there is anyone that can help you. If you are unable to make a satisfactory contact, and the problem cannot wait until the appropriate person is back in the office, contact the Region Utility Coordinator. While they cannot do anything about the people who are out of the office, they may have a suggestion as to whom else to call.

When you make contact with someone, explain that you have found a facility that wasn't shown on the plan and you need to have it relocated. Request a timeframe from them of when the work can be done. If the time seems unreasonable, ask if it can be expedited. It may be helpful to request a field meeting to discuss the situation.

Sometimes the prudent thing to do is to adjust the highway plans to accommodate the newly discovered utility facility. The total costs and the time involved should be considered when making this decision.

UNDETECTED CONFLICTS

There are times when conflicts arise during construction that were not noticed beforehand. The utility facilities are shown correctly on the plan and there were no changes to the plan, but the utility company and the designer failed to notice a conflict and the conflict wasn't resolved prior to construction.

The responsibility for determining conflicts always lies with the utility company. However, no one is perfect, and utility company personnel are not as familiar with reading WisDOT plans as highway designers are. Regardless of how it happened, you are now stuck with a problem during construction. It doesn't do any good to point fingers and rant and rave. That doesn't solve the problem.

Again, the first thing to do is to contact the person from the utility company listed on the plan, or the person that attended the preconstruction meeting. If they aren't available, ask if there is anyone that can help you. If you are unable to make a satisfactory contact, and the problem cannot wait until the appropriate person is back in the office, contact the Region Utility Coordinator. While they cannot do anything about the people who are out of the office, they may have a suggestion as to whom else to call.

When you make contact with someone, explain that you have a conflict with one of their facilities which wasn't resolved prior to construction and you need to have it relocated. Request a timeframe from them of when the work can be done. If the time seems unreasonable, ask if it can be expedited. It may be helpful to request a field meeting to discuss the situation.

The cause of the undetected conflict may be that the facility is not at the anticipated depth. If that is the case, document this by photographs and/or sketches. Shoot elevations on the exposed facility. Also, document the details in the project diary; it may be needed if there is a court case regarding delays to the contractor.

Remember to document the location of the utility facility and the markings, including elevations where appropriate. There may be questions later regarding the exact location of the utility facility and its relationship to the planned roadwork.

As long as time permits, the best solution is to have the utility relocated. That is what should have happened prior to construction. However, sometimes the prudent thing to do is to adjust our plans to

accommodate the newly discovered conflict. The total costs and the time involved should be considered when making this decision. This solution only makes sense when the contractor has no other work to do and cannot wait for a delay, safety is a concern, or the public is intolerably inconvenienced.

UNEXPECTED FIELD CONDITIONS

This may occur when changes have been made to the topography since the survey work was done. A good example is a utility pole that was outside of the slope intercepts on the plan and therefore was not relocated because it was believed that there was no conflict. However, during construction it is discovered that a property owner altered the original terrain a few years ago and now the grading limits are such that the pole is in conflict. Or maybe drainage conditions are different than was anticipated, and a relocation is now required.

In this case, no one is at fault. The utility relocated according to the information that was provided to them. The designers used the information that was provided to them. For some reason, actual field conditions are now different than what was used for the design and changes must be made.

If you need the utility relocated, or exposed to determine if there is a conflict, you must contact the person from the utility company listed on the plan, or the person that attended the preconstruction meeting. If they aren't available, ask if there is anyone that can help you. If you are unable to make a satisfactory contact, and the problem cannot wait until the appropriate person is back in the office, contact the Region Utility Coordinator. While they cannot do anything about the people who are out of the office, they may have a suggestion as to whom else to call.

When you make contact with someone, explain that you have a conflict with one of their facilities because of a change in field conditions and that it needs to be relocated or exposed, whichever the case may be. Request a timeframe from them of when the work can be done. If the time seems unreasonable, ask if it can be expedited. It may be helpful to request a field meeting to discuss the situation.

INCORRECTLY MARKED FACILITIES

This problem is more serious. It can cause an extremely dangerous situation that may lead to injury and/or costly delays. The owner of a utility facility is responsible for accurately locating their facilities in the field. Sometimes this locating work is contracted out to various companies, but the ultimate responsibility lies with the utility.

If you discover that a buried utility line has been incorrectly marked, document the markings and the facility location. Take photographs with a 6-foot rule indicating the scale if possible. At a minimum draw a sketch with appropriate dimensions showing the markings and the facility. This information should be placed in the project diary and the project files.

The utility must be notified immediately. It is best to have one of their employees view the site before any markings are destroyed. They can verify the documentation you provide. If a utility line is damaged by construction activities because of the mis-marking, the utility should not be billing the contractor. The contractor should not be held liable, unless he was digging with power equipment within 18 inches of the markings (See ss.182.0175 – [Figure 1-1](#)). The utility should bear the cost of the repairs or may seek compensation from their locating service.

This situation frequently requires immediate action and may be treated as an emergency. You should start by contacting the utility person on the plan, but if they are unavailable, talk to anyone from the utility and explain the situation. They should be able to put you in touch with the proper people within the utility. If you are unable to contact anyone at the utility, contact the Region Utility Coordinator or Region Permit Coordinator for assistance on how to proceed.

Remember to document the location of the utility facility and the markings, including elevations where appropriate.

FACILITIES SHOWN ON PLAN INCORRECTLY

There are times when for some reason the utility facilities are shown incorrectly on the plan. There may have been a survey error, it may have been field located incorrectly, it may have been inadvertently moved during the design process, or perhaps there was a glitch in the software program or in converting it from one format to another. At any rate, the location of the utility facility on the plan is different from where it is in the field. This may pose a problem for the contractor and add to their costs.

This is indeed unfortunate and may be costly, but the general note on the plan states, ***“The locations of existing and proposed utility installations on the plans are approximate. There may be other utility installations within the project area that are not shown.”*** This disclaimer alerts the contractor that conditions may be different than what is depicted on the plan. The designer does their best to accurately portray the expected work site conditions, but there is no guarantee. Everyone that bids on the job is on an equal basis, and does so knowing the information is only approximate.

A discrepancy of 15 to 20 feet may be a legitimate reason for a claim for additional work depending on the specific situation, but a discrepancy of 1 to 2 feet is not.

FAILURE TO FOLLOW WORKPLAN

This is a common problem, unfortunately. There may be various reasons why the utility did not complete their work as stated in the work plan, including weather delays and storm damage. Whatever the reason, the problem is that they have not relocated according to their plan.

On Trans. 220 projects, the utility is responsible for any damages to the contractor for delays caused by the utility if it did not follow the approved work plan. The contractor can sue the utility for those damages. The WisDOT would act as a neutral third party, providing documentation and testimony regarding the facts of the project.

For non-Trans. 220 projects, there is no recourse for the contractor other than to file a claim with WisDOT for additional time or additional expenses. Local road projects and most urban projects are non-Trans. 220. The contractor may file a claim with the utility, and if the situation is well documented, the utility may pay the claim. However, the legal obligation is not as clear as it is on Trans. 220 projects.

When a problem is discovered, contact the person from the utility company listed on the plan, or the person that attended the preconstruction meeting. If they aren't available, ask if there is anyone that can help you. If you are unable to make a satisfactory contact, and the problem cannot wait until the appropriate person is back in the office, contact the Region Utility Coordinator. While they cannot do anything about the people who are out of the office, they may have a suggestion as to whom else to call.

When you make contact with someone, explain that their facility which is in conflict with the highway project hasn't been relocated as promised and you need to have it relocated. Let them know that their failure to relocate quickly will hold up our contractor. Request a timeframe from them of when the work can be done. If the time seems unreasonable, ask if it can be expedited. It may be helpful to request a field meeting to discuss the situation. Remember that at this point in time our main concern is to get the facility relocated quickly, not who will have to pay damages. Focus on getting the problem resolved, not on placing blame or making threats regarding future actions.

On Trans. 220 projects, if you are unable to get a quick resolution to the problem, it may be a good idea to write a letter to the utility company notifying them that they are in violation of Trans. 220 and that they may be liable to the highway contractor for any utility-related delay damages. A sample Trans. 220 Violation letter is shown in Figure 1-18.

Utility Problem During Construction Documentation Report

Project ID:

Title:

Subtitle:

Highway:

County:

Project Manager Name:

Date of Report:

Date Problem Was
Identified:

Date Remedied:

Name of Utility Company (and contractor(s)/subcontractor(s) if applicable):

Type of Utility: ☐ Gas ☐ Electric ☐ Telecommunications ☐ CATV
☐ Water ☐ Sewer ☐ Pipeline ☐ Other

Name of Highway Contractor:

Authority that issued utility permit (if applicable): ☐ WisDOT ☐ County ☐ Local

Nature of Problem:

- ☐ Unforeseen conflict (not identified during the design process)
- ☐ Existing (at time of design) utility facility shown incorrectly on plan
- ☐ Utility facility not shown on plan
- ☐ Failure to follow work plan
- ☐ Facility not placed in compliance with permit
- ☐ Plan Change
- ☐ Erosion Control
- ☐ Traffic Control
- ☐ Other:

Details – explain what happened: (Include station offset, elevation of buried utility facility if shallow or cut, pictures, attach plan and cross section sheets as needed)

Impact on Project:

- ☐ Time delay
- ☐ Change of planned method of operation
- ☐ Additional costs – explain below what the costs are and to whom
- ☐ Other:

Please explain the impact of the utility problem on the schedule or operations of the highway contractor:

Additional follow-up needed? ☐ Yes ☐ No

If Yes, please explain:

You are required to send a copy of this report to your Regional Office Utility Coordinator and through routing or email to Ernie Peterson at central office.

Ernest J Peterson, P.E. ernest.peterson@dot.state.wi.us (608) 266-3589
Utility/Access Management Engineer
Wisconsin Dept. of Transportation
Bureau of Technical Services

UtilityProblemReport.doc

9/29/06

**Utility Problem During Construction Documentation Report
Utility Company Version**

Project ID:

Title:

Subtitle:

Highway:

County:

WisDOT Project Manager Name (if known):

Date of Report:

Date Utility Company Notified:

Date Remedied:

Name of Highway Contractor/Subcontractor:

Nature of Problem:

- ☐ Unforeseen conflict (not identified during the design process)
- ☐ Existing (at time of design) utility facility shown incorrectly on plan
- ☐ Utility facility not shown on plan
- ☐ Facility not placed in compliance with permit
- ☐ Plan Change
- ☐ Erosion Control
- ☐ Traffic Control
- ☐ Operator Error
- ☐ Facility location marked incorrectly
- ☐ Other

Details – explain what happened:

(Include location, elevation of buried utility facility if shallow or cut, pictures, attach plan and cross section sheets as needed, anything that might help explain the situation.)

Additional follow-up needed? (circle one) Yes / No

If Yes, please explain:

Submitted by:

Utility Company:

Type of utility: (Circle one)

Gas Electric Telecommunications CATV Water Sewer Pipeline Other

Send a copy of this form to: Region Utility Coordinator, address, city, state